HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.982 OF 2006 (MS)

Surendar Dev s/o Late Shankar Dev, Arya Nagar, Gadarpur, District Udham Singh Nagar .....Petitioner

Versus

1. Judge, Family Court, District Udham Nagar
2. Smt. Sunita Arya r/o Mohalla Ganesh Nagar, Subhash Nagar, Bareilly .....Respondents

Sri Sundir Singh, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 28.7.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the part of order dated 17.7.2006 passed by the respondent no.1.

Briefly stated the petitioner filed a suit under section 13 of the Hindu Marriage Act, for divorce against the respondent no. 2. The respondent no.2 moved an application under section 24 of the Hindu Marriage Act for interim maintenance and for recovery of litigation expenses, which was dismissed on 20.09.2005 on technical grounds. Respondent no.2 moved application for recall of the order which was allowed vide order dated 19.11.2005 and the petitioner was allowed to file fresh application. Thereafter respondent no.2 moved another application under section 24 of the Hindu Marriage Act. On 17.4.2006, petitioner filed an application under Order 13 Rule

10 C.P.C. before the Trial Court summoning the evidence of income 0f the respondent no. 2, which was rejected by the respondent no.1 and awarded a sum of Rs. 2,000/- per month to the respondent no. 2 as interim maintenance.

The grievance of the petitioner is that the Judge, Family Court rejected the application of the petitioner under Order 13 Rule 10 C.P.C. which was necessary for coming to a correct conclusion regarding the income of the respondent no.2.

In view of the facts and circumstances of the case, liberty is given to the Judge, Family court to direct the respondent no. 2 to file statement of her income duly verified by the authority of post office if he considers proper for the decision of the case, however, the entire record of the post office cannot be summoned.

Accordingly, Writ petition is disposed of. No order as to costs.

Rajesh Tandon, J.

Dated: 28.7.2006

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